

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-06 FRB-03 INR-07 IO-10 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 L-03 OIC-02

PA-01 PRS-01 USIA-06 NSC-05 CG-00 DOTE-00 FMC-01

DODE-00 OFA-01 DLOS-04 TAR-01 AGR-05 STR-04 (ISO) W
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R 251403Z JUL 75

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TO SECSTATE WASH DC 8072

LIMITED OFFICIAL USE SECTION 01 OF 02 OECD PARIS 19312

E. O. 11652: N/A

TAGS: EFIN, OECD, ETRN, UNCTAD, ECON

SUBJECT: OECD COUNCIL DISCUSSION OF U.N.

LINER CODE, JULY 15, 1975

REFS: (A) OECD PARIS 16844

(B) OECD PARIS 11977

(C) STATE 158119

1. SUMMARY: AT OECD COUNCIL MEETING DISCUSSION OF
DRAFT ENTRY IN MINUTES RECORDING COUNCIL CONCLUSIONS
RE COMPATIBILITY OF U.N. LINER CODE WITH OECD CODE OF
LIBERALIZATION OF INVISIBLE TRANSACTIONS, FRENCH
INTRODUCED AN ALTERNATIVE TO SEC GEN DRAFT WHICH PUT
US BACK TO SQUARE ONE. THE FRENCH DRAFT DOES LITTLE BUT
REFLECT THE MINORITY VIEWS THAT THE ADHERENCE TO U.N.
LINER CODE IS COMPATIBLE WITH OECD CODE AS INDICATED
EARLIER IN THE PAYMENTS COMMITTEE REPORT (C(75)1).
ISSUE WAS REMANDED TO EXECUTIVE COMMITTEE FOR FURTHER
DISCUSSION IN SEPTEMBER. END SUMMARY.

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2. FRENCH REP (VALERY) INTRODUCED AN ALTERNATIVE TO

SECGEN'S PROPOSED DRAFT ENTRY IN OECD COUNCIL MINUTES (REF A) STATING FRANCE FOUND ACCEPTABLE NEITHER THE SECGEN'S DRAFT NOR ALTERNATIVE DRAFT PROPOSED BY UK (SEE PARA 4 BELOW). FRENCH TEXT FOLLOWS:

(A) (UNCHANGED)

(B) (BEGIN TEXT) NOTED MOREOVER MEMBER COUNTRIES' AGREEMENT THAT IF THEY BECOME PARTIES TO THE UNITED NATIONS CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES, THEIR APPROVAL CANNOT BE GIVEN OTHERWISE THAN IN CONFORMITY WITH THE OBLIGATIONS ACCEPTED BY THEM UNDER THE CODE OF LIBERALISATION OF CURRENT INVISIBLE OPERATIONS OF THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. (END TEXT)

(C) (DELETE)

US DEL (KATZ) INDICATED THAT, BASED ON INFORMAL TRANSLATION, HE FOUND THE FRENCH REDRAFT DID LITTLE TO MEET THE OBJECTIVE IN THE SECGEN'S DRAFT OF GIVING ASSURANCE TO OECD NON-SIGNATORIES OF UN CODE. FRENCH VERSION APPEARED TO BE LITTLE MORE THAN A RESTATEMENT OF THE MINORITY VIEWS ON THE COMPATIBILITY OF THE CODE, AS EXPRESSED IN THE INVISIBLES COMMITTEE AND PAYMENTS COMMITTEE. THUS ISSUE WAS BACK TO SQUARE ONE, HE SAID.

3. APART FROM FRENCH PROPOSAL, COUNCIL DISCUSSION OF DRAFT ENTRY CENTERED ON DELEGATIONS' GIVING THEIR SUPPORT FOR EITHER THE DRAFT BY THE SECGEN (REFTEL A) OR FOR ALTERNATIVE U.K. DRAFT ENTRY (PARA 4 BELOW). SECGEN'S FINAL PROPOSED DRAFT DIFFERS FROM THAT REPORTED IN REFTEL A BY ADDING IN PARAGRAPH (B) THE WORD "GOVERNMENTAL" BEFORE PHRASE "...MEASURES CONTRARY TO..." IT ALSO ADDS NEW PARAGRAPH (C) AS FOLLOWS: "REQUESTED THE COMMITTEE FOR INVISIBLE TRANSACTIONS, CONSULTING WITH THE MARITIME TRANSPORT COMMITTEE, AS NECESSARY, TO KEEP UNDER REVIEW THE MEASURES OF LIBERALIZATION APPLIED IN RELATION TO INTERNATIONAL MARITIME TRANSPORT BY ANY MEMBER COUNTRIES WHICH MIGHT ADHERE TO THE UNITED NATIONS CONVENTION."

4. THE MORE ELABORATE DRAFT ENTRY PROPOSED BY U.K. LIMITED OFFICIAL USE

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(A) NOTED THAT ALL MEMBERS OF THE INVISIBLES COMMITTEE RECOGNIZED THE POSSIBILITY OF CONFLICT BETWEEN THE U.N. CONVENTION AND THE OECD CODE; (B) NOTED THAT THERE WAS DISAGREEMENT AMONG THE MEMBER COUNTRIES ON THE QUESTION OF COMPATIBILITY; (C) REAFFIRMED THAT THE OECD CODE WOULD BE THE PREVAILING INSTRUMENT IN THE EVENT OF CONFLICTS AND STATED THAT SIGNATORIES OF THE CONVENTION WILL ABSTAIN FROM ANY MEASURES CONTRARY TO THE OECD CODE

WHEN IMPLEMENTING THE CONVENTION; (D) SOUGHT LEGAL
CLARIFICATION OF THE OBLIGATIONS WHICH WOULD BE ASSUMED
BY CONTRACTING PARTIES TO THE U.N. CONVENTION;
(E) REQUESTED THE INVISIBLES COMMITTEE TO CONSIDER
WAYS TO MINIMIZE DIFFICULTIES TO WHICH IMPLEMENTATION
OF THE U.N. CONVENTION MIGHT GIVE RISE FOR OECD
COUNTRIES.

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5. SUPPORTING THE SECGEN'S DRAFT WERE FRG, SWITZERLAND,
CANADA, SWEDEN, JAPAN, SPAIN, ITALY, TURKEY. THE U.K.
PROPOSAL WAS PREFERRED BY NORWAY, DENMARK, NETHERLANDS
AND GREECE, ALTHOUGH NETHERLANDS, GREECE AND NORWAY
INDICATED THEY WOULD ALSO FIND THE SECGEN'S DRAFT
ACCEPTABLE.

6. SECGEN, WITH APPROVAL OF THE COUNCIL, DECIDED
REMAND QUESTION TO THE EXECUTIVE COMMITTEE FOR FURTHER

CONSIDERATION AND ATTEMPT AT DRAFTING A
COMPROMISE TEXT. THE ISSUE WILL BE BROUGHT BEFORE
THE EXECUTIVE COMMITTEE IN MID-SEPTEMBER.

7. COMMENT: MISSION REGARDS FRENCH VERSION OF ENTRY
AS UNACCEPTABLE, PRIMARILY BECAUSE IT DOES NOT AFFORD
OEC NON-SIGNATORIES OF U.N. CODE THE ASSURANCE THAT THE
OECD SIGNATORIES OF UN CODE AGREE ON THE OBLIGATIONS OF
MEMBER STATES TO THE OECD TO ABSTAIN FROM ANY MEASURES
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CONTRARY TO THE OECD INVISIBLES CODE AFTER SIGNATURE.
ALTHOUGH MISSION WOULD OF COURSE PREFER U.K. DRAFT,
IT NOW SEEMS HIGHLY UNLIKELY THAT ANY FORMULA THAT
PRECISE WILL BE ACCEPTABLE TO COUNCIL. WHEN EXECUTIVE
COMMITTEE TAKES UP MATTER IN SEPTEMBER, IT IS PROBABLE
THAT BEST WE CAN HOPE FOR IN AGREED STATEMENT IS SOME
ATTENUATED VERSION OF SECGEN'S DRAFT. THE ESSENTIAL
POINT IS THAT ULTIMATE FORMULATION CONTAIN SOME CLEAR
ASSURANCES TO NON-SIGNATORIES. IN ADDITION, WE WILL
ARGEE, AT LEAST INITIALLY, TO STRENGTHEN SECGEN DRAFT
ENTRY IN SEVERAL WAYS. FIRST, THAT SOME MENTION OF THE
DIVISION OF OPINION IN OECD ON THE QUESTION OF COMPATI-
BILITY BE RECORDED ALONG LINES AGREED IN PAYMENTS
COMMITTEE. SECONDLY, THAT THE TERM "GOVERNMENTAL"
BE REMOVED FROM PARAGRAPH (B) TO DISCOURAGE GOVERNMENTS
FROM CLAIMING THAT ACTIONS OF SHIPPING CONFERENCES AND
OTHER PRIVATE MEASURES IN CARRYING OUT THE PROVISIONS
OF THE U.N. CONVENTION DO NOT ENTAIL ACTIONS OF
GOVERNMENTS CONTRARY TO THEIR OBLIGATIONS UNDER
INVISIBLES CODE. THIRDLY, IN PARAGRAPH (C) A CLEARER
STATEMENT THAT THE INVISIBLES COMMITTEE WILL BE RESPON-
SIBLE FOR REVIEWING MEASURES TO IMPLEMENT THE UNITED
NATIONS CONVENTION BY ANY MEMBER COUNTRY WHICH MIGHT
ADHERE TO THE CONVENTION.

8. WHILE SUCH IMPROVEMENTS SEEM HIGHLY UNLIKELY, IT MAY
BE THAT BY SEPTEMBER NON-SIGNATORIES OF UN CODE WILL BE
LESS INTERESTED IN COMPROMISE ON DRAFT ENTRY IN VIEW OF
EC COMMISSION'S RECENT ACTION. MISSION WOULD APPRECIATE
ANY FURTHER GUIDANCE AND COMMENTS, IN PARTICULAR REGARD-
ING THE WORD "GOVERNMENTAL" WHICH WAS NOT CONSIDERED IN
INSTRUCTIONS RECEIVED IN REFTEL C, NO LATER THAN END OF
AUGUST 1975.
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